

FILED

STATE OF WISCONSIN,

NOV 22 2006

Plaintiff,

vs.

MEMORANDUM DECISION
Joan Osty
Magistrate Court
Case No.: 06-CM-504

BRYAN JAMES HATHAWAY,

Defendant.

Defendant moves for dismissal of the complaint on the grounds that it fails to state sufficient facts such as would enable a magistrate to infer that there is probable cause to believe the defendant committed a sexual act with "an animal" as prescribed in sec. 944.17(2)(c) Wis. Stats. If a complaint is insufficient in alleging facts supporting such probable cause, the court will lack personal jurisdiction over the person and the complaint will have to be dismissed.

The gravamen of the defendant's challenge is that since the complaint alleges that he had sex with a dead deer, he cannot be guilty of committing an act of sexual gratification with an animal in the context and within the meaning of sec. 944.17(2)(c) Wis. Stats. He contends that the statute does not prohibit one from having sex with a carcass since the usual or common definition of an animal in dictionaries refers to it as a "living being" or a "living individual." *Webster's Dictionary* defines it as "any of a kingdom of living beings." Defendant further argues that accepting the proposition that the above statute can be violated after the death of the animal leads to absurd results. If the line is not drawn at the time of death, defendant asks at what point of deterioration of the carcass is it no longer an animal within the

meaning of the statute. Does it qualify when it's just skin or bones? Defendant suggests that the statute is ambiguous in this regard since reasonable people can disagree about its meaning. He maintains that the court must then construe the statute in favor of the defendant in order to determine its legislative intent. (See State v. Schaller, 70 Wis.2d 107 (1975))

After reviewing the arguments of counsel and the statute, however, the court is satisfied that the motion should be denied. While defendant's arguments pose an interesting issue requiring the court to construe the language of the statute in the context of the nature of the charge and the legislative intent behind the statute, the more reasonable, common sense analysis of this issue leads the court to conclude that the conduct sanctioned by sec. 944.17(2)(c) Wis. Stats is not limited to live animals.

First of all, the court is not confined to any specific dictionary definition in determining the meaning of "animal" in the context of the statute. While the reference to a "living" creature seems consistent in most of the various dictionary definitions, the court may also consider the common and ordinary meaning of the word based on common usage and understanding. Most people understand that an animal does not necessarily cease being or qualifying as an animal or even being referred to as an animal once it's dead and still in the same identifiable form as it was when living. If one limits or, for that matter, expands the application of the statute to strictly coincide with the dictionary definition of "animal", one could argue that the statute is ambiguous as written because it may be interpreted to prohibit a person from committing an act of sexual gratification with another person insofar as a general and inclusive definition of the word covers all living beings. Such a hypothetical interpretation is absurd, of course, but serves as an example of why interpreting the meaning of this word strictly according to its dictionary definition should be avoided.

Next, the language in sec. 944.17(2)(c) Wis. Stats. describing the type of conduct involving a person and an animal which the law sanctions is clear and specific enough to enable a court or jury to determine whether or not the statute was violated regardless of whether or not the animal was alive at the time of the act. Subsection (2)(c) prohibits a person from committing "an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal." It's certainly reasonable to conclude that it's possible for a person to engage in such behavior even with a dead animal as long as enough of the animal remains for such a determination to be made. The language of the statute sets forth a reasonable legal basis upon which the court can decide whether a person can commit such a crime with a dead animal. At the same time, it provides a reasonable stopping point to prevent going down what defendant describes as a slippery slope leading to absurd results when trying to determine at what point of the decomposition of a dead animal does it cease being an animal within the meaning of this statute.

Finally, and in combination with the above factors, in deciding whether or not this crime can only be committed with a live animal, the court certainly looks to the intent and purpose behind the statute. Sec. 944.17 is one of a variety of offenses under Chapter 944 titled "Crimes Against Sexual Morality." Sec. 944.01 Wis. Stats. sets forth the intent of this chapter:

"Intent. The state recognizes that it has a duty to encourage high moral standards. Although the state does not regulate the private sexual activity of consenting adults, the state does not condone or encourage any form of sexual conduct outside the institution of marriage. Marriage is the foundation of family and society. Its stability is basic to morality and civilization, and of vital interest to society and this state."

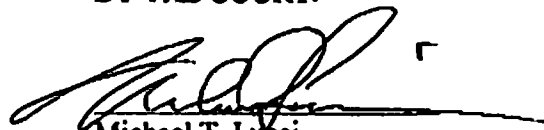
The court notes that this chapter sanctions various types of sexual behavior which are considered inappropriate and in some instances even repulsive under most any normal and

decent standard of moral values. Its primary focus is on human behavior and on protecting sexual morality in the community, and not necessarily on animal protection. It's essentially the legislature's effort to codify what is legally unacceptable in society with respect to human sexual behavior. As such, the court finds that it's consistent with such legislative intent to interpret sec. 944.17 Wis. Stats. in a manner that would encompass its application to situations involving even dead animals.

For all of the above reasons, the court does not believe that the statute is ambiguous and, furthermore, finds that the complaint alleges sufficient facts to support a finding that there is probable cause to believe that the defendant violated sec. 944.17(2)(c) Wis. Stats. Therefore, defendant's motion is hereby denied.

Dated this 22nd day of November, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael T. Lucci", with a long horizontal flourish extending to the right.

Michael T. Lucci
Circuit Court Judge